

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

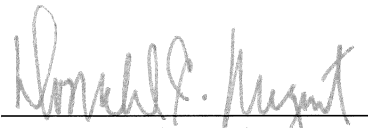
ANDRE MAGRUDER,)	CASE NO.: 1:19 CV 1980
)	
Plaintiff,)	JUDGE DONALD C. NUGENT
)	
v.)	<u>ORDER ADOPTING</u>
)	<u>MAGISTRATE’S REPORT AND</u>
)	<u>RECOMMENDATION</u>
GRAFTON CORRECTIONAL)	
INSTITUTION,)	
)	
)	
Defendant.)	

This matter comes before the Court upon the Report and Recommendation of Magistrate Judge Jonathan D. Greenberg. The Report and Recommendation (ECF # 10), issued on April 1, 2020, is hereby ADOPTED by this Court. Plaintiff brought this action alleging violations of the Rehabilitation Act of 1973 (“RA”), the Americans with Disabilities Act (“ADA”), 42 U.S.C. §1983, and the Eight Amendment to the United States Constituion. Defendants filed a Motion to Dismiss the Complaint for failure to state a claim, pursuant to Fed. R. Civ. P. 12(b)(6). (ECF #7).

The Magistrate Judge recommends that Plaintiff’s claim be dismissed. Defendant is not an entity capable of being sued under §1983. The more proper defendant would be the Ohio Department of Rehabilitation and Correction (“ODRC”), however, as the Report and

Recommendation points out, the ODRC is not a “person” under §1983 and is immune from suit under the Eleventh Amendment. Further, the Magistrate correctly found that the Complaint fails to allege any facts showing that Mr. Magruder was discriminated against because of his disability, or that the Defendant’s alleged behavior was directed toward him in particular solely because of his disability, he cannot recover under either the ADA or the RA.

Mr. Magruder has not filed any objections to the Magistrates Report and Recommendation, nonetheless, the Court has reviewed *de novo* the Report and Recommendation, *see Ohio Citizen Action v. City of Seven Hills*, 35 F. Supp. 2d 575, 577 (N.D. Ohio 1999), and ADOPTS the Report and Recommendation in its entirety. (ECF # 10). The Defendant’s Motion to Dismiss is, therefore, GRANTED. (ECF #7). IT IS SO ORDERED.



DONALD C. NUGENT
United States District Judge

DATED: May 29, 2020